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August 20, 2007

[See Order on p. 2]

BY HAND

Hon. Jed S. Rakoff
United States District Court
500 Pearl Street, Room 1340
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DATE FILED: 8-22-07

Re: Associated Press v. U.S. Department of Defense
No. 05-Civ-5468 (JSR)

Dear Judge:

Associated Press v. United States Department of Defense Doc. 43

On behalf of all parties, I am writing to confirm our telephone conversation with your clerk on Thursday, August 16, 2007, concerning the status of this FOIA case, in which the Associated Press (AP) has sought from the Department of Defense (DOD) various documents relating to detainees held by the United States government at the detention center at Guantanamo Bay.

The Court's Order of August 9, 2007 resolved the last substantive issue raised by the AP's Complaint. That issue concerned AP's request for documents relating to all decisions to transfer or release detainees from Guantanamo Bay before DOD created Administrative Review Boards to assess the status of each detainee. In light of DOD's claim that it would take more than a year to process the requested documents, and that virtually all information would likely be subject to withholding under one or more FOIA exemptions, AP agreed to DOD's proposal that it first produce a sample set of documents that would accurately reflect the universe of all documents called for by this aspect of AP's FOIA request. The Court's August 9 Order, in turn, upheld under the national security exemption, 5 U.S.C. § 552(b)(1), each of the redactions from the sample documents made by DOD. After reviewing the Court's Order, AP has decided not to appeal that holding.

Given the Court's decision to uphold the challenged redactions from the pre-ARB transfer/release documents, and given DOD's continuing representations that (a) the documents submitted to the Court constitute a representative sample of the universe of pre-ARB

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transfer/release documents requested by AP, (b) the remaining responsive documents would be similarly redacted for the same reasons as the sample documents, and (c) it would take more than a year to process the remaining documents, AP has withdrawn its request to DOD for the production of the remaining pre-ARB transfer/release documents in redacted form, without prejudice to its right to renew the request in the future if circumstances should so warrant.

Subject to DOD's pending appeal from the Court's earlier Order compelling the release of information concerning, among other things, the alleged abuse of Guantanamo detainees, there are no further outstanding disputes to be resolved in this case, apart from AP's statutory entitlement to fees and costs. In the related case of *Associated Press v. Department of Defense*, No. 05 Civ. 3941 (JSR) (*AP I*) the Court allowed AP to defer its fee application until after both of these lawsuits were finally resolved. When DOD elected to appeal the earlier Order in this case, AP proceeded to submit directly to DOD a request for fees with respect to *AP I* only. That request remains under review by DOD, and a fee application for *AP I* will be made to the Court only in the event the parties are unable to agree on the fees and costs AP is properly entitled to recover.

Because AP currently would be obligated to file its fee requests in both *AP I* and *AP II* within 14 days after entry of judgment in this action, the parties propose to prepare a stipulated order that will permit any fee requests to be filed within thirty (30) days after final disposition of the pending appeal.

Respectfully submitted,

David A. Schulz

cc: Sarah Normand
Elizabeth Wolstein

→ The stipulation is approved, and no further document is required unless the parties so desire. Based on this letter (which the Clerk is directed to docket), the Clerk is directed to enter final judgment closing this case on the basis of the Court's prior rulings, without prejudice to the Court's future consideration of attorneys fees.

SO ORDERED [signature] USDJ — 8/21/07